

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 27672 of 2005(T)

IA.NO.538/02 IN OS.144/1998 of II ADDL.SUB COURT,THRISSUR
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PETITIONER:

BABY, AGED 53, W/O. KOCHAN BALAN,
THIRUVATHRA DESOM, MANATHALA AMSOM,
CHAVAKKAD TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

SEBASTIAN, S/O. PELLISSERY CHAKOO,
AMMADAM DESOM, PARALAM VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.27672/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF WRITTEN STATEMENT SUBMITTED BY PETR. DT.1.12.89.

EXT.P2 – TRUE COPY OF ADDL. WRITTEN STATEMENT FILED BY PETR. IN O.S.144/98 OF SUB COURT, THRISSUR, DT.24.1.02.

EXT.P3 – TRUE COPY OF I.A.538/02 IN O.S.144/98 OF DO.

EXT.P4 – TRUE COPY OF OBJECTIONS FILED BY RESPONDENT IN IA.538/02 IN DO.

EXT.P5 – TRUE COPY OF ORDER OF ADDL.SUB COURT, THRISSUR DT.17.11.04 IN I.A.538/02.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.27672 OF 2005
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DATED THIS THE 26th JULY, 2007

J U D G M E N T

In this Writ Petition under Article 227 of the Constitution, the grievance of the petitioner, defendant in the suit is that his application for leave of the court for filing additional written statement under Order VIII Rule 9 of the Code of Civil Procedure was dismissed by the learned Subordinate Judge on the reason that the proposed additional written statement does not raise a plea of counter-claim or set off. Ext.P5 is the impugned order.

2. I have heard the submissions of Sri.G.Sreekumar Chelur, learned counsel for the petitioner and also those of Sri.Jijo Paul, learned counsel for the respondent-plaintiff.

3. Flaying Ext.P5 order, Sri.G.Sreekumar would submit that the view of the learned Subordinate Judge that additional pleadings under Order VIII Rule 9 of the Code are contemplated from the side of the defendant only when he raises a plea of set off or counter-claim is erroneous.

4. Sri.Jijo Paul, learned counsel for the respondent attempted to support Ext.P5 order on merits. The learned counsel submitted that all the averments in the proposed additional written statement pertain

to matters which were well within the knowledge of the petitioner at the time when he filed the original written statement itself. No explanation whatsoever has been given by the petitioner in his affidavit in support of the application for leave as to why he could not raise those averments in the original written statement.

5. "Pleadings" have been defined in the Code under Order VI Rule 1 to mean "plaint or written statement". Order VIII Rule 9 deals with pleadings subsequent to plaint and written statement. "Subsequent pleadings" can be either by the plaintiff or by the defendant. The view of the learned Subordinate Judge that subsequent pleadings under Order VIII Rule 9 are contemplated from the side of the defendant only when he raises pleas of set off or counter-claim is clearly erroneous. What Rule 9 provides is only that no pleadings subsequent to the written statement of the defendant other than by way of defence to set off or counter-claim shall be presented except with the leave of the court. It is thus clear that the reference to set off or counter-claim under Rule 9 of Order VIII is reference to subsequent pleadings raised by the plaintiff and not to subsequent pleadings raised by the defendant. As far as subsequent pleadings raised by the defendant are concerned and for any

subsequent pleadings from the plaintiff other than those by way of defence to the pleas of set off and counter-claim, what is necessary is that the leave of the court shall be obtained. Additional pleadings raised by the defendants subsequent to the written statement originally filed by them under Order VIII Rule 1 of the Code are often referred to as additional written statements. Filing of additional written statement may be necessitated for the purpose of introducing new contentions or for clarifying or elaborating on the contentions already raised. That need not necessarily be for raising pleas of set off or counter-claim, since having regard to the rules of limitation applicable to pleas of set off and counter-claim, defendant may have to raise such pleas at the earliest opportunity itself.

6. It was submitted at the Bar that written statement raising a defence to the plea of set off or counter-claim is often referred to as "rejoinder". I do not think so. In fact, S.Sankarasubban, J. had occasion, in **Sunil & Vasanth v. Tata Ceramics Ltd.** (1999 (1) KLT 61), to deal with various types of pleadings which are raised by parties in actual practice though the Code of Civil Procedure envisages only plaints and written statements as pleadings. His Lordship observed, relying on **Kochukesavan Nair v. Gouri Amma** (1967 KLT 257),

that the word "replication" is the plaintiff's answer to the defendant's pleas through his written statement (which need not necessarily be one raising a plea of set off or counter-claim) and "rejoinder" is the defendant's answer to the plaintiff's replication. His Lordship in fact noticed that the judgment of another learned Judge of this Court, K.P.Balanarayana Marar, J., in **Sujir Keshav Nayak v. Sujir Ganesh Nayak** (1991 (2) KLJ 37) had deprecated the practice of filing replications since, according to that learned Judge, filing of replications was not contemplated by the Code of Civil Procedure. Nevertheless, Sankarasubban, J. preferred to follow the judgment in **Kochukesavan Nair's** case (supra) on the view that the said decision had almost become stare decisis and on the reason that the decision of K.P.Balanarayana Marar, J. in **Sujir Keshav Nayak's** case (supra) was reversed by the Supreme Court, though on other points.

7. There is no denying the fact that the practice of filing of replications by plaintiffs by way of answering defendants' pleas in their written statements and of filing of rejoinder by defendants by way of answer to the contentions raised by plaintiffs through their replications is in vogue in various parts of the State. In common law pleading also, the word "replication" is in usage and the same means reply

made to the defendant's plea or answer. Similarly, "rejoinder" is used in common law pleading to refer to the second pleading of the defendant, being his answer to the plaintiff's replication (see Black's Law Dictionary). Interestingly in language the words replication and rejoinder are almost synonymous. The ratio of Justice Marar's decision in **Sujir Keshav Nayak's** case (supra) also is only that replications cannot be filed as a matter of right or course and that leave of the court will be absolutely necessary under Order VIII Rule 9. According to me, it will be sufficient if the courts understand all pleadings subsequent to the original plaint and written statement filed in the suit, by whatever name they are called, as "subsequent pleadings" governed by Order VIII Rule 9.

8. There certainly is some force in the submission of Mr.Jijo Paul that most of the averments in the proposed additional written statement sought to be filed by the petitioner were well within the knowledge of the petitioner at the time when he filed the original written statement and that he has not offered any explanation in his affidavit in support of the leave application as to why those averments could not be raised earlier. At the same time, it cannot be said that the additional contentions sought to be raised through the additional

written statement are totally irrelevant for adjudication of the issues in the suit. I am therefore of the view that the application submitted by the petitioner should have been allowed by the court below, but on terms.

9. I set aside Ext.P5 and allow I.A.No.538 of 2002 filed by the petitioner under Order VIII Rule 9 C.P.C. for leave to file additional written statement on condition that the petitioner pays a total amount of Rs.5000/- by way of costs, out of which Rs.4000/- will be paid to the respondent either directly or through his counsel in this Court or in the court below and Rs.1000/- will be paid to the High Court Legal Services Committee. Both payments shall be made within one month from today. If payments are not made, the Writ Petition will stand dismissed and the impugned order will stand confirmed.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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